



# Civil Resolution Tribunal

Date Issued: November 20, 2019

File: ST-2019-002959

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hulbert v. The Owners, Strata Plan K513*, 2019 BCCRT 1312

B E T W E E N :

ADAM HULBERT

**APPLICANT**

A N D :

The Owners, Strata Plan K513

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Adam Hulbert (owner), owns strata lot 16 in the respondent bare land strata corporation, The Owners, Strata Plan K513 (strata).

2. The owner says that the strata council's former treasurer used his authority to instruct a contractor to cut down trees on common property and Crown land for his own use or sale as firewood. The owner asks for an order that the strata require its former treasurer to repay the contractor's \$2,500 invoice that the strata paid.
3. The owner also says that 2 other owners have erected structures on their respective lots in contravention of the strata's bylaws and the BC Building Code. He asks for an order that the strata require the 2 other owners to remove the structures.
4. The strata says that the former treasurer acted in good faith when authorizing the removal of the trees. It also says that the owner's claim is out of time. As for the structures, the strata says that the owners who erected structures had strata council approval and followed the bylaws.
5. The owner is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. Are the owner's claims about the felled trees out of time under the *Limitation Act*?
  - b. Did the strata fail to enforce its development bylaws? If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant owner bears the burden of proof. This means the owner must provide evidence to prove each of his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
12. The strata consists of 101 bare land strata lots near Hope, BC. The strata is located in a forested area with trees on strata lots, common property and neighbouring Crown land.

***Are the owner's claims about the felled trees out of time under the Limitation Act?***

13. On April 22, 2016, the strata hired a contractor to remove 14 trees. The trees were either on common property or Crown land. On January 20, 2017, the strata hired a different contractor to remove 5 more trees in the same area. The strata paid the contractors' invoices, which were \$4,500 and \$2,500 respectively. In both cases, the contractors were asked not to remove the felled logs.
14. There is no dispute that the strata's former treasurer, DK, took some of the felled logs. The strata says other owners also helped themselves, which has been the strata's practice because it eliminates the expense of having contractors remove the logs. The strata also says the trees were dead or dying and posed a safety hazard, but the owner disputes this and is concerned that the strata could have to pay fines for cutting trees on Crown land.
15. The strata says that the owner did not bring his claim regarding tree removal within the applicable limitation period. The owner does not appear to dispute that his claim is out of time under the *Limitation Act*. However, he asks that any applicable limitation period be waived given the treasurer's alleged misappropriation of funds.
16. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful. The *Limitation Act* applies to the tribunal and establishes a basic limitation period of 2 years. I find that this 2-year limitation period applies to the applicant's claims.
17. A limitation period begins to run the day after a claim is discovered. In this case, the most recent tree removal happened on January 20, 2017. The owner said the strata council treasurer removed the tree rounds to be used as firewood "as soon as these trees hit the ground[.]" Based on that statement, I find that the owner discovered the claim on January 20, 2017. In any event, the owner emailed the strata council about the issue on March 3, 2017, so the latest he can be said to have discovered his claim is March 3, 2017.

18. The owner filed his Dispute Notice on April 14, 2019, more than 2 years after emailing the strata council about the issue. As the owner's claim was filed more than 2 years after it was discovered, I find that it is out of time under the *Limitation Act*. As for the owner's argument that the limitation period should be waived, there is no discretion not to apply the time limits in the *Limitation Act*. Although there are special discovery rules for certain types of claims or persons, none of those special rules apply to this situation. I therefore dismiss the claim regarding the felled trees.
19. Although he framed the claim as one against the strata, he is effectively seeking a remedy against a former council member based on the council member's conduct in that role, which runs into standing and jurisdiction issues (see *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1215 at paras 21-27). Given my finding about the limitation period, I do not need to decide the standing and jurisdiction issues.

***Did the strata fail to enforce its development bylaws?***

20. The owner says that the structures on SL24 and SL25 were erected in contravention of the strata's bylaws and the BC Building Code.
21. The owner's strata lot does not share any borders with SL24 or SL25, although it appears that the owner would see developments on those strata lots when returning to his strata lot on the common property road.

**Bylaws**

22. The strata filed a complete set of bylaws in the Land Title Office on November 25, 2013. The amendments to the bylaws since then are not relevant to this dispute.
23. The bylaws relevant to development are in Division 9 – Alteration and Construction Requirements, which begins with bylaw 36.
24. Bylaw 36(1) requires owners to obtain written permission from the strata council prior to making an alteration to a strata lot that involves, among other things, the construction, alteration or renovation of any building or structure.

25. Bylaw 36(2) says the council must not unreasonably withhold its approval under bylaw 36(1) but will require that the owner comply with all applicable provisions of bylaw 36.
26. Bylaw 36(3) sets out the plans, permits and other information an owner must submit, as applicable, to council when requesting approval under bylaw 36(1). This includes a health permit or confirmation of the adequacy of the existing septic system from the health authority.
27. Bylaw 36(4) says it will be a condition of approval that certain other permits, as applicable, be provided during or following construction. The permit relevant to this dispute is a surveyor's report, which is required for "new houses and buildings". The survey must be signed and sealed by a registered BC land surveyor of the owner's choice and submitted prior to the framing inspection. It is "recommended" that the surveyor pin the site prior to work commencing and finalize the survey prior to the framing inspection.
28. Bylaw 37(6) says that improvements on a strata lot will not be erected less than 25 feet from the frontage road boundary, 20 feet from the flanking road boundary, and 10 feet from the side and rear of each strata lot, unless approved in writing by the council.
29. Bylaw 41 grants the strata council the power to revoke permission to build and order the correction or stoppage of work where the owner supplies incorrect information or violates any provision under which the strata granted permission.
30. Bylaw 42 says for any improvement that proceeded without the council's written approval or is in contravention of the bylaws or is in an unsafe condition, council may require the owner to submit an application in compliance with bylaw 36, remove the improvement or bring the improvement up to specified standards. If an owner fails to comply with such an order, the council may, at the expense of the owner, cause the improvement to be removed or brought up to the specified standard.

## **Development on SL24**

31. SL24 is a 3-sided strata lot at a fork in the common property road. The structure in question is a single-family dwelling which, at the time of submissions, was substantially completed. The strata gave conditional approval for construction on May 6, 2018. The conditions included approval by the building inspector and compliance with the bylaws and the BC Building and Plumbing Codes.
32. The foundation formwork for the dwelling started on May 8, 2018. On May 12, the owner of SL25 notified the owner of SL24 that the foundation formwork looked to be less than 10 feet away from their dividing property line and thus a potential contravention of bylaw 37(6). On May 14, the owner of SL24 applied to the strata for a variance through the building inspector. The same day, the strata council granted by email the variance, estimated at 3 feet, with the consent of the owner of SL25. I am satisfied that this met the requirements of a written variance under bylaw 37(6).
33. I infer from the strata council's emails that a survey was conducted on May 15, 2018, and that the concrete foundation was poured the next day.
34. The owner expresses 2 related concerns about the survey. First, he says there was no 'official survey', using valid survey pins, by a registered BC land surveyor. Second, he says the survey was not completed before the structure was 'pinned' or located on the lot. He says this makes all approvals and variances moot, as it is contrary to strata bylaw 36(4)(b) to build without the survey.
35. With respect to the first issue, the strata says that the owner of SL24 submitted a valid building location survey relative to pre-existing survey monumentation. The strata did not provide a copy of the survey in evidence, but did provide a copy of a December 18, 2018 email from another owner acknowledging receipt of the signed and sealed survey.
36. The strata says it confirmed with its building inspector, Stephen Gormley, that the survey met the requirements under the BC Building Code. Mr. Gormley's emails from December 2018 document his opinion that the survey was signed and sealed

by a BC land surveyor in business for 25 years and accepted by the Fraser Valley Regional District.

37. While it would have been preferable for the strata to provide the tribunal with a copy of the survey, on balance, I find that the strata did receive a valid survey, based on the emails from 2018 discussed above. As for whether the survey met the bylaw requirements, I find that the strata was entitled to rely on Mr. Gormley's advice. Strata council members are not expected to be experts in every field. The strata council can reasonably rely on the advice of qualified professionals and contractors.
38. With respect to the second issue, the strata says that the foundation was not poured until after council approved the variance and received the survey showing the building location. It says the owner of SL24 could have moved the forms prior to pouring the foundation, but the owner instead elected to request a variance. As set out above, bylaw 36(4)(b) requires a survey prior to the framing inspection for new houses. I agree with the strata that the bylaws are clear that while a survey is *recommended* prior to work starting, a survey is not required until the time of framing inspection.
39. Therefore, I find that the owner of SL24 did not breach bylaw 36(4)(b).
40. As for the owner's claim that the owner of SL24 failed to obtain a health permit, the strata says the owner of SL24 submitted confirmation from the Fraser Valley Regional District and Sunshine Valley Utilities to ensure they were able to hook up to the strata's septic system. Based on the emails from Mr. Gormley to the strata council in May 2018, I find that the owner of SL24 provided the required confirmation to satisfy bylaw 36(3)(f)(i).
41. As for the owner's claim that the structures are contrary to the BC Building Code, I find that there is insufficient evidence to make that determination. It is the applicant owner who bears the burden of proof and he did not point to specific requirements that were not met.



42. I find that the strata did not fail to enforce its bylaws regarding development on SL 24 and therefore I dismiss the owner's claims about SL24.

### **Development on SL25**

43. SL25 is a 4-sided strata lot that shares one border with SL24. The structure in question is an electrical shed that the owner of SL25 proposed would serve as the electrical drop for the lot. The strata gave its approval on September 18, 2017. The foundation was poured in June 2018.

44. The owner takes issue with the shed's location, which photos indicate is approximately 6 feet from the road. The bylaws require a setback of 25 feet unless the strata grants a variance. The owner says that the variance granted for SL25, if there was one, was invalid because it was not in writing. His related concern is that the owner of SL25 did not submit the required survey.

45. The strata submits that an unnamed former strata council member granted SL25 a variance verbally prior to the request for construction. It says council granted the variance in writing when it gave approval for construction.

46. The strata's bylaws do not include the word 'variance'. However, bylaw 37(6) establishes the setbacks and says improvements must comply with the setbacks unless approved *in writing* by the strata council. I find that when the parties refer to a variance, they are referring to this written approval.

47. There is no explicit written variance in evidence. Council granted written construction approval by email for the electrical shed on SL25. However, because the strata did not provide SL25's full proposal and diagram in evidence, it is unclear whether the strata was aware of the extent of the variance it was granting, or if it was granting a variance at all. It is also unclear whether the shed was built in accordance with the proposal.

48. The strata says that council approved the shed to serve as the electrical drop for the lot in place of a pole, which required it to be placed within 10 feet of the property line. It also says the irregular shape of the lot and strata sewer right of way further

necessitated the need for the variance. This is supported by a statement provided by a former strata council member who said that the owner of SL25 submitted a diagram with a footprint of all proposed structures and a justification for the setback variance. While it would have been preferable for the strata to explicitly approve the exact variance to the setback requirements, on balance I find that the strata council was aware that by giving written approval for the project, it was varying the setback requirements.

49. The strata does not say that the owner of SL25 provided a survey. In some of the evidence, the strata council said that the owner of SL25 had been transparent about the lack of a survey. Based on this evidence I find that the owner of SL25 did not submit a survey at any point.
50. Bylaw 36(4)(b) is explicit that a surveyor's report is required for new houses and buildings. I find that a "building" includes the electrical shed on SL25. By failing to give effect to this mandatory requirement, I find that the strata failed to enforce bylaw 36(4)(b).
51. The courts have addressed a strata corporation's discretionary powers to enforce its bylaws in various circumstances.
52. In *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32, the BC Supreme Court held that a strata council has discretion to enforce its bylaws in certain circumstances but that such discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced.
53. I find that in exercising its discretion, the strata must be reasonable, and consider the expectations of the owners with respect to prior enforcement the bylaw. That is, if the strata has consistently enforced the bylaw, it is likely unreasonable for the strata not to continue to enforce it. The owner says, and the strata did not dispute, that he had a survey done to verify where his house would be located on his lot. There is no evidence that the strata council has waived the survey requirement for other owners in the past. There is also no evidence that the strata council gave any

consideration to the effect on other owners of allowing the owner of SL25 to build without a surveyor's report. I find that by allowing the owner of SL25 to build without providing a surveyor's report, as required in the bylaws, the strata acted unreasonably.

54. I find that the strata has failed to enforce bylaw 36(4)(b) against the owner of SL25. Compliance with bylaw 36(4)(b) will require the owner to submit a surveyor's report. The strata council may require the owner of SL25 to provide other information or documentation as required by the bylaws. I find that these actions are within the strata council's powers under bylaw 42(1).
55. I find that it would be inappropriate to grant the removal order that the owner wants because the strata has discretion in how to address contraventions of its bylaws, as outlined above. In particular, under bylaw 42(1), where an improvement is in contravention of the bylaws, the strata council may serve the owner with a notice requiring the owner to submit an application in compliance with bylaw 36, to remove the improvement, or to bring the improvement to a specified standard. I order the strata to apply bylaw 42(1), but because the strata has enforcement options, I decline to make a specific order about what remedial measures the strata should take.

## **TRIBUNAL FEES AND EXPENSES**

56. As the owner was partially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is entitled to reimbursement of half his \$225 tribunal fees, or \$112.50.
57. The owner claimed \$2,000 in expenses, broken down as \$1,000 for expert evidence and \$1,000 for legal fees, with "exact amounts TBD". There was no expert evidence. Under the tribunal rules, legal fees arising in strata property disputes are only recoverable in extraordinary circumstances. I do not find the circumstances here extraordinary. In any event, there is no proof of either expense. I dismiss the claim for expenses.

58. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **ORDERS**

59. I order that within 21 days of this decision the strata must, under bylaw 42(1), serve, or cause to be served, on the owner of SL25, a notice requiring the owner of SL25 to take action satisfactory to the strata to ensure compliance with bylaw 36(4)(b), within 60 days.

60. I order the strata to comply with sections 35 and 36 of the SPA in respect of any requests for documentation from the owner.

61. I order that within 21 days of this decision the strata must pay the owner \$112.50 as reimbursement for half his tribunal fees. The owner is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

62. I dismiss the owner's remaining claims.

63. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

64. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the applicant can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

